

**REMARKS**

Claims 1, 4-14, 17-26, 28, 30-42, 44-51, and 53 were pending in the application and remain pending after the entry of the foregoing amendments. Claims 1, 12-14, 17-26, 28, 42, 45, 46, 51, and 53 have been amended. No new matter has been added.

Applicant thanks the Examiner his time and consideration during telephonic interview on Thursday, September 27, 2007, which is summarized herein by way of the foregoing claim amendments and the following remarks, in accordance with MPEP § 713.04. In particular, Applicant thanks the Examiner for viewing a video demonstrating several features of the invention.

Based on the interview, it is Applicant's understanding that the method claims 28, 30-42, 44-51, and 53 will be allowable upon deletion of the phrase "and other portable electronic communication device operative to transmit and/or receive data and/or voice signals" that was the source of the pending § 112 rejection. Independent claims 28, 42, 51, and 53 (as well as independent device claims 1, 14, and 26) have been amended accordingly, as discussed below.

It is further Applicant's understanding that amending the independent device claims 1, 14, and 26 to recite that the device has a component adapted to "generate and display quantitative vibration" will distinguish the claimed invention over U.S. Patent No. 6,287,252 (*Lugo*) and U.S. Patent Application No. 2003/0060765 (*Campbell*) and result in the allowability of the device claims 1, 4-14, and 17-26. Claims 1, 14, and 26 have been amended accordingly, as discussed below.

Further, in regard to the outstanding office action, Applicant thankfully acknowledges the withdrawal of the § 102(b) rejections under U.S. Patent No. 5,002,065 (*LaCourse*), the § 103 rejections under *LaCourse* in view of U.S. Patent No. 5,931,793 (*Laudadio*), and the § 103 rejections under *LaCourse* in view of U.S. Patent No. 6,641,533 (*Causey*).

**Support for Amendments**

Independent claims 1, 14, 26, 28, 42, 51, and 53 have been amended to delete recitation of “and other portable electronic communication device operative to transmit and/or receive data and/or voice signals” and instead now recited “a portable electronic communication device comprising one or more of a cellular phone, page, and beeper.”

Claim 1 has been amended to recite that the component is further adapted to generate and display quantified vibration for use in a medical diagnosis. Support for the amendment can be found in the specification at least in paragraphs [0034] and [0035].

Claim 12 has been amended to incorporate features previously recited in claim 13. Support for this amendment can be found in the specification at least in paragraph [0036].

Claim 13 has been amended to recite the device further comprising at least one component for storing and/or processing data. Support for this amendment can be found in the specification at least in paragraph [0036].

Claim 14 has been amended to recite the component being adapted to generate and display quantified vibration in the second mode. Support for the amendment can be found in the specification at least in paragraphs [0034] and [0035]. Claim 14 has also been amended to clarify the recitation of the first and second modes.

Claims 17-23 have been amended to conform with the amendments regarding the second mode made to claim 14, from which they directly or indirectly depend.

Claim 24 has been amended to incorporate features previously recited in claim 25. Support for this amendment can be found in the specification at least in paragraph [0036].

Claim 25 has been amended to recite the device further comprising at least one component for storing and/or processing data. Support for this amendment can be found in the specification at least in paragraph [0036].

Claim 26 has been amended to recite a component for generating and displaying quantified vibration of a fixed or variable magnitude for use as part of a medical test of nerve function. Support for the amendment can be found in the specification at least in paragraphs [0034] and [0035].

Claims 45 and 46 have been amended to conform with claim 42, from which each depends.

### **35 USC § 112 Rejections**

Claims 1, 4-14, 17-26, 28, 30-42, 44-51, and 53 stand rejected as allegedly failing to comply with the written description requirement under § 112, first paragraph. In particular, the Office Action asserts that “other portable electronic communication devices” are not described in the specification.

Claims 1, 4-14, 17-26, 28, 30-42, 44-51, and 53 stand rejected as allegedly being indefinite under § 112, second paragraph. In particular, the Office Action asserts that the scope of “other portable electronic communication devices” is unclear.

Claims 1, 14, 26, 28, 42, 51, and 53 (all of the independent claims in the application) have been amended to overcome the § 112 rejections by deleting the recitation of “other portable electronic communication devices.” Accordingly, Applicant respectfully requests that the § 112 rejections be withdrawn as to all claims pending in the application.

Further, because no other rejections were set forth with respect to claims 28, 30-42, 44-51, and 53, Applicant respectfully submits those claims are in condition for allowance.

### **35 USC § 102(b) Rejection (*Lugo*)**

Claims 1, 4, 12, 14, 24, and 26 stand rejected as allegedly being anticipated under § 102(b) by U.S. Patent No. 6,287,252 (*Lugo*).

#### **Claim 1**

*Lugo* does not disclose a device adapted to generate and display quantified vibration for use in a medical diagnosis, as recited in claim 1. Rather, *Lugo* discloses a device having a communications module 50 that generates unquantified and undisplayed vibration in response to an alarm or an incoming call (Col. 9, lines 21-23). The *Lugo* device is structurally incapable of performing the functions of the claimed device.

Claims 4-13 depend from claim 1, and without prejudice to their individual merits, are therefore patentable over *Lugo* for at least the same reasons as claim 1.

#### **Claim 4**

*Lugo* does not disclose, teach, or suggest a probe for detecting neuropathy in a subject. In particular, the patches 40 of *Lugo*, which are the only portions of the device in

contact with a subject, contain only sensors and no vibrating means. Instead, the vibrating means 313 is located in the communications module 50, and is thus remote from the sensor-containing patches 40 and not adapted to be in contact with a subject.

**Claim 12**

As-amended claim 12 includes features of formerly recited in claim 13, which was not deemed to be anticipated by *Lugo*.

**Claim 13**

*Lugo* does not disclose a device including at least one component for storing and/or processing data including one or more of the vibration perception threshold, the vibration disappearance threshold, and the vibration threshold, as recited in claim 13. Moreover, claim 13 depends from claim 12, which is itself patentable over *Lugo*.

**Claim 14**

*Lugo* does not disclose a device adapted to generate and display quantified vibration in a second mode, as recited in claim 14. Rather, *Lugo* discloses a device having a communications module 50 that generates unquantified and undisplayed vibration in response to an alarm or an incoming call (Col. 9, lines 21-23). The *Lugo* device is structurally incapable of performing the functions of the claimed device.

Claims 17-25 depend from claim 14, and without prejudice to their individual merits, are therefore patentable over *Lugo* for at least the same reasons as claim 14.

**Claim 24**

As-amended claim 24 includes features of formerly recited in claim 25, which was not deemed to be anticipated by *Lugo*.

**Claim 25**

*Lugo* does not disclose a device including at least one component for storing and/or processing data including one or more of the vibration perception threshold, the vibration

disappearance threshold, and the vibration threshold, as recited in claim 25. Moreover, claim 25 depends from claim 24, which is itself patentable over *Lugo*.

**Claim 26**

*Lugo* does not disclose a device for generating and displaying quantified vibration of a fixed or variable magnitude for use as part of a medical test of nerve function, as recited in claim 26. Rather, *Lugo* discloses a device having a communications module 50 that generates unquantified and undisplayed vibration in response to an alarm or an incoming call (Col. 9, lines 21-23). The *Lugo* device is structurally incapable of performing the functions of the claimed device.

For at least the foregoing reasons, *Lugo* does not anticipate claims 1, 4, 12-14, and 24-26, as amended. Accordingly, Applicant respectfully requests that the § 102 rejections under *Lugo* be withdrawn.

**35 USC § 102(e) Rejection (*Campbell*)**

Claims 1, 4-14, and 17-26 stand rejected as allegedly being anticipated under § 102(e) by U.S. Patent Application No. 2003/0060765 (*Campbell*).

**Claims 1, 4-13**

*Campbell* does not disclose a device adapted to generate and display quantified vibration for use in a medical diagnosis, as recited in claim 1. Rather, *Campbell* discloses a vibrator 36 which provides unquantified and undisplayed vibrational alarm feedback from an infusion device to a patient (Para. [0056]). The *Campbell* device is structurally incapable of performing the functions of the claimed device.

Claims 4-13 depend from claim 1, and without prejudice to their individual merits, are therefore patentable over *Campbell* for at least the same reasons as claim 1.

**Claims 14, 17-25**

*Campbell* does not disclose a device adapted to generate and display quantified vibration for use in a medical diagnosis, as recited in claim 14. Rather, *Campbell* discloses a

vibrator 36 which provides unquantified and undisplayed vibrational alarm feedback from an infusion device to a patient (Para. [0056]). The *Campbell* device is structurally incapable of performing the functions of the claimed device.

Claims 17-25 depend from claim 14, and without prejudice to their individual merits, are therefore patentable over *Campbell* for at least the same reasons as claim 14.

**Claim 26**

*Campbell* does not disclose a device for generating and displaying quantified vibration of a fixed or variable magnitude for use as a part of a medical test of nerve function, as recited in claim 26. Rather, *Campbell* discloses a vibrator 36 which provides unquantified and undisplayed vibrational alarm feedback from an infusion device to a patient (Para. [0056]). The *Campbell* device is structurally incapable of performing the functions of the claimed device.

Further, *Campbell* does not disclose a device that operates or functions as a portable electronic communication device comprising one or more of a cellular phone, pager, and beeper, as recited in each of claims 1, 14, and 26. The Office Action asserts only that *Campbell* discloses a device that operates “at least as an other portable electronic communications device.” However, as-amended independent claims 1, 14, and 26 do not recite an “other portable electronic communications device.” Thus, *Campbell* does not anticipate these claims or their respective dependent claims 4-13 and 17-25.

For at least the foregoing reasons, *Campbell* does not anticipate claims 1, 4-14, and 17-26, as amended. Accordingly, Applicant respectfully requests that the § 102 rejections under *Campbell* be withdrawn.

**CONCLUSION**

Applicant respectfully submits that the application is in condition for allowance. Withdrawal of all rejections, and allowance of the application, including claims 1, 4-14, 17-26, 28, 30-42, 44-51, and 53, is respectfully requested. An early notice of allowance of those claims is earnestly solicited.

Respectfully submitted,

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